

SEP 8 . 2008

**FEDERAL ELECTION COMMISSION**

**999 E Street, N.W.**

**Washington, D.C. 20463**

**FIRST GENERAL COUNSEL'S REPORT**

**MUR: 5998**

**DATE COMPLAINT FILED: 04/23/08**

**DATE OF NOTIFICATION: 04/30/08**

**LAST RESPONSE RECEIVED: 05/30/08**

**DATE ACTIVATED: 06/10/08**

**EXPIRATION OF SOL: 3/20/13**

**COMPLAINANT:**

**Thomas Fitton, President of Judicial Watch,  
Inc.**

**RESPONDENTS:**

**Senator John McCain  
John McCain for President, and Joseph  
Schmuckler, in his official capacity as  
treasurer  
Lord Jacob Rothschild  
Nathaniel Philip Rothschild**

**RELEVANT STATUTES AND  
REGULATIONS:**

**2 U.S.C. § 441e  
11 C.F.R. § 100.52(d)(1)  
11 C.F.R. § 100.55  
11 C.F.R. § 110.20(i)  
11 C.F.R. § 116.1(c)  
11 C.F.R. § 116.3**

**INTERNAL REPORTS CHECKED:**

**Disclosure Reports**

**FEDERAL AGENCIES CHECKED:**

**None**

**I. INTRODUCTION**

**This matter arises from a complaint alleging that presidential candidate John McCain and  
his authorized committee, John McCain for President, and its treasurer, Joseph Schmuckler, ("the  
Committee") may have received an in-kind contribution from foreign nationals in violation of**

1 2 U.S.C. § 441e. The complaint alleges that the Committee held a fundraiser in London,  
2 England on March 20, 2008, and that goods and services for catering the event may have been  
3 donated by Lord Jacob Rothschild and Nathaniel Rothschild, the foreign national owners of  
4 Spencer House, which was the venue for the event. Complaint at 1-3. The complaint cites the  
5 invitation to the event, which welcomes guests to Spencer House "by kind permission of Lord  
6 Rothschild OM GBE and the Hon Nathaniel Rothschild," as evidence that McCain may have  
7 been granted special treatment. *Id.* at 1. Further, based solely on the language of the invitation,  
8 the complaint alleges that the Rothschilds may have had decision-making roles in McCain's  
9 election campaign, and that this constitutes a violation of section 441e. Complaint at 3; see  
10 Advisory Opinion 2004-26.

11 Based on the available information, including written responses from the respondents  
12 which demonstrated that the Committee paid all of the event costs and no information presented  
13 that would suggest the costs charged and payments made were outside the ordinary course of  
14 business, we recommend the Commission find no reason to believe that the respondents violated  
15 the Act.

16 **II. FACTUAL BACKGROUND**

17 On March 20, 2008, Senator John McCain attended a fundraiser for his presidential  
18 campaign in London, England.<sup>1</sup> The event took place at Spencer House, a palace once belonging  
19 to the ancestors of Princess Diana, but now owned by the investment trust RIT Capital Partners  
20 plc (f/k/a Rothschild Investment Trust). Lord Jacob Rothschild, the chairman of RIT Capital

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<sup>1</sup> Senator McCain was in Europe in this period participating in a Senate Armed Services Committee delegation tour of Europe, but departed from the group to attend the fundraiser. It appears that the costs of the Senator's side trip to London, including lodging and the return flight to the U.S., were paid by the Committee. Complaint, Attachment 1.

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1 Partners, and his son Nathaniel Rothschild, who is a director and major stockholder in RIT  
2 Capital Partners, attended the event. As noted above, the invitation stated that the event was  
3 taking place at the Spencer House "by kind permission of Lord Rothschild OM GBE and the Hon  
4 Nathaniel Rothschild."

5       Apparently due to the invitation's reference to the Rothschilds and their "permission"  
6 bestowed on the event, the complainant concluded that foreign nationals (the Rothschilds) may  
7 have made in-kind contributions to the Committee in the form of catering services or other  
8 amenities. There is no allegation in the complaint that any of the funds raised by the event were  
9 contributed by foreign nationals. The invitations to the event contained warnings that only U.S.  
10 citizens or permanent residents were eligible to contribute to the Committee, and in fact, required  
11 contributors to submit a "copy of a valid and current U.S. passport that proves U.S. citizenship or  
12 permanent residency status." Response of the Committee, Exhibit 1.

13       Both Rothschilds submitted responses and supporting documents demonstrating that the  
14 Committee paid all of the event costs. They explained that Spencer House, a facility with eight  
15 state rooms located in London, is made available to the public for rental and that it routinely  
16 caters events such as the McCain fundraiser. Respondents state that the Committee was charged  
17 the "usual commercial rates" for this event for catering and related services. Thus, respondents  
18 deny the complaint's allegation that the use of the Spencer House and related costs were donated  
19 to the Committee. They also deny having any decision-making or management role with the  
20 fundraiser, and explain that the invitation's use of the phrase "kind permission" was a "standard  
21 polite phrase used on invitations to acknowledge the use of this site for the event and  
22 not as a statement about payment for the costs of the event." Response of Jacob Rothschild at 2;  
23 *see also*, Response of Nathaniel Rothschild at 1. The Committee's response notes that the "kind

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1 permission" language and the names of the Rothschilds were not on the invitation that the  
2 Committee produced at its offices. It said that it "assumes" that a different invitation, using the  
3 Rothschilds' names, was sent out by the "Campaign's London Fundraising Consultant."  
4 Response of Committee at 3. The Committee response confirms that the Rothschilds "attended  
5 the fundraiser as guests of the Campaign." *Id.* Finally, the Committee response states  
6 categorically that the decision to hold the London event "was made by agents of the Committee"  
7 and no decision-making authority was granted the Rothschilds. *Id.*

8 Spencer House invoiced the Committee for \$55,377.50 in event costs on April 29, 2008,  
9 which was forty days after the event and six days after the complaint was filed. Response of  
10 Committee, Exhibit 3. The May 2, 2008 cover memo attached to the invoice stated that "You  
11 had agreed at the outset of our discussions to pay for all charges for this luncheon ... ." *Id.* The  
12 cover letter acknowledged the delay and asserted that it was because Spencer House "had to  
13 ascertain the validity of adding Value Added Tax to the account as you are in the United States."  
14 *Id.* The invoice billed the Committee for 126 meals at £95 each, a facility rental fee of £5,000,  
15 decorations fees totaling £4,474, beverage costs of £1,807, a dining bill for staff and security  
16 ("sandwiches") for £150 and included a £4,095 Value Added Tax. *Id.* Once the invoice was  
17 issued, the Committee paid the bill three days later, on May 5, 2008. Response of Committee,  
18 Exhibit 4.

19 **III. LEGAL ANALYSIS**

20 The provision of any goods or services without charge or at a charge that is less than the  
21 usual and normal charge for such goods or services is a contribution. 11 C.F.R. § 100.52(d)(1).  
22 It is unlawful for a foreign national, directly or indirectly, to make a contribution or donation of  
23 money or other thing of value, or make an expenditure in connection with a Federal, State, or

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1 local election. 2 U.S.C. § 441e. It is also unlawful for a person to solicit, accept, or receive a  
2 contribution or donation from a foreign national. *Id.* A "Foreign national" is an individual who  
3 is not a citizen of the United States or a national of the United States and who is not lawfully  
4 admitted for permanent residence. *Id.*

5 Commission regulations implementing 2 U.S.C. § 441e prohibit foreign nationals from  
6 participating in the decisions of any person involving election-related activities. See 41 C.F.R.  
7 § 110.20(i). Such participation in decisions includes directing, dictating, controlling, or directly  
8 or indirectly participating "in the decision-making process of any person, such as a corporation,  
9 labor organization, political committee, or political organization with regard to such person's  
10 Federal or non-Federal election-related activities, such as decisions concerning the making of  
11 contributions, donations, expenditures, or disbursements in connection with elections for any  
12 Federal, State, or local office or decisions concerning the administration of a political  
13 committee." *Id.* This broad prohibition encompasses foreign national involvement in the  
14 management of any political committee, and its decisions regarding its receipts and  
15 disbursements in connection with Federal and non-Federal elections. Explanation and  
16 Justification for Regulations on Contribution Limitations and Prohibitions, 67 Fed. Reg. 69946  
17 (Nov. 19, 2002).

18 A commercial vendor is any person who provides goods or services to a candidate or  
19 political committee and whose usual and normal business involves the sale, rental, lease or  
20 provision of those goods or services. 11 C.F.R. § 116.1(c). A commercial vendor, whether or  
21 not it is a corporation, may extend credit to a candidate or political committee provided that the  
22 credit is extended in the vendor's ordinary course of business and the terms of the credit are  
23 similar to the terms the vendor observes when extending a similar amount of credit to a

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1 nonpolitical client of similar risk. 11 C.F.R. §§ 116.3(a) and (b). If a creditor fails to make a  
2 commercially reasonable attempt to collect the debt, a contribution will result. 11 C.F.R.  
3 § 100.55

4 It appears that Spencer House is a venue whose usual and normal business is providing  
5 facilities for events such as fundraisers, and therefore it is a commercial vendor under the  
6 Commission regulations. In this case, the submitted invoices and accompanying narrative  
7 explanations from the respondents seem to demonstrate that a standard commercial rate was  
8 charged to the Committee for the use of this facility, and that the billed amount was paid. See 11  
9 C.F.R. § 100.52(d)(1) (contribution results when less than the usual and normal charge is sought  
10 by vendor). Thus, there does not appear to have been any in-kind contribution of goods and  
11 services as alleged by the complaint resulting from the amount charged to and paid by the  
12 Committee. Further, the Committee and the Rothschilds all denied that the Rothschilds had a  
13 decision-making role in the event, and there is no information to the contrary; thus the  
14 complaint's allegation based on an application of 11 C.F.R. § 110.20(i) also fails.

15 The May 2, 2008 letter from Spencer House to the Committee stated that the Committee  
16 "had agreed at the outset of our discussions to pay for all the charges for this luncheon" and notes  
17 that the reason for the delay in sending the invoice for the charges was that the Spencer House  
18 needed to consult with "advisors" to ascertain whether Value Added Tax should be added to the  
19 charges since the Committee is located in the United States. Response of Committee, Exhibit 3.<sup>2</sup>  
20 The invoice itself appears to be quite comprehensive and includes charges for meals, drinks and  
21 ancillary services such as "sandwiches" for staff and security, as well as the tax. *Id.* While

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<sup>2</sup> The Value Added Tax or VAT is a form of sales tax prevalent in many European countries. The tax is assessed on the increase in value at each production stage of a product and at distribution. Black's Law Dictionary 1499 (8<sup>th</sup> Ed. 2004).

1 the fact that the invoice was issued only after the complaint was filed could raise a question as to  
2 the commercial reasonableness of Spencer House's extension of credit to the Committee and  
3 efforts at debt collection, *see* 11 C.F.R. § 100.55, the overall circumstances do not support  
4 complainant's suspicions. The respondents have provided an explanation for the delay (the VAT  
5 tax concern), and there is no information to suggest other reasons for the delay. Equally  
6 important, the invoice was issued a little over 30 but less than 45 days after the event, and was  
7 paid immediately. Given the relatively short delay, and the explanation for the delay, we  
8 conclude that the circumstances presented do not give rise to an in-kind contribution.<sup>3</sup>

9 Accordingly, we recommend that the Commission find no reason to believe that John  
10 McCain for President, and its treasurer, Joseph Schmuckler ("the Committee"), Senator John  
11 McCain, Lord Jacob Rothschild or Nathaniel Philip Rothschild violated the Act and close the  
12 file.

13 **IV. RECOMMENDATIONS**

- 14 1. Find no reason to believe that Senator John McCain, John McCain for President,  
15 and Joseph Schmuckler, in his official capacity as treasurer, violated the Act;  
16  
17 2. Find no reason to believe that Lord Jacob Rothschild and Nathaniel Philip  
18 Rothschild violated the Act;  
19  
20 3. Approve the attached Factual and Legal Analyses;  
21  
22 4. Approve the appropriate letters; and  
23  
24 5. Close the file.

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<sup>3</sup> In past cases where the Commission determined that in-kind contributions resulted from extensions of credit, the cases involved much longer delays in payment that did not appear commercially reasonable. *See* MUR 5396 (Bauer for President 2000) (respondents enter into conciliation agreement to resolve, *inter alia*, 441a and 441b violations resulting from extension of credits from three different vendors totaling over \$700,000 and owed for periods between 105 to 235 days); MUR 5047 (Clinton/Gore '96) (the Commission finds reason to believe that committee and two of its vendors, including a hotel that catered a campaign event, violated section 441b by accepting or making illegal corporate extensions of credit totaling over \$900,000 that were unresolved for four months or longer, but takes no further action because the debts had been paid in full and some debt collection activity occurred).

Thomasenia P. Duncan  
General Counsel

7/8/08  
Date

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